IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1774 of 1988
For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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D G MARATHA- DELETED

Versus

KABUTRICEVI WD/O.UTTAMSINH U GODAI

Appearance:
MR RAJNI H MEHTA for the appellants
Mr. K.G. Pandit for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellants, who are the owner and the Insurance Company of the offending vehicle, namely, motor truck bearing Registration No.GTY 5922, have filed this appeal under Section 110-D of the Motor Vehicles Act, 1939, challenging the judgment and award dated May 4, 1988, passed by the Motor Accident Claims Tribunal (Main) Vadodara, in MAC Application No.742 of 1985.

2. The deceased, Tamsin Umraosingh Gosai, was working with the Oil & Natural Gas Commission, as Operator Grade-II (heavy vehicles) in the grade of

Rs.550-1130 plus allowances and other benefits. At the time of the accident, the total emoluments of the deceased was Rs.26,536/- per annum, i.e. Rs.2211/- per month. On June 7, 1985, the deceased was returning from his service on his Luna moped. At about 10.30 p.m. the deceased was proceeding towards Vadodara and, when had reached village Alamgir, the motor truck GTY 5922 driven by the original opponent No.1 came from the southern side at an excessive speed and knocked down the deceased, Tamsin, as a result of which, he had succumbed to the injuries sustained by him in the said vehicular accident. The respondents-claimants filed MAC Application No.742 of 1985 claiming compensation of Rs.4,60,730/- with interest at the rate of 12% per annum from the date of filing the application till realisation.

3. Opponents Nos.1 and 2, being the driver and the owner of the motor truck in question, even though served with the summons, did not file written statement. However, the Insurance Company filed its written statement at Exh.21, inter alia, contending that the compensation claimed by the claimants was excessive and the accident had not taken place due to the sole negligence on the part of the truck driver. The Insurance Company prayed that the claim petition be dismissed with costs.

4. On the basis of the rival contentions of the parties, the Tribunal framed issues at Exh.25. To substantiate the claim of compensation, the claimants examined the widow of deceased, Smt. Kabutrideviben, at Exh.26; Devikaben Sunderlal Shah, who was working as Finance and Accounts Officer, ONGC; and Ramanbhai Bhikhabhai Vasava, who was working as SRP Constable, Group No.9, at Baroda, who had witnessed the incident and whose evidence had proved the sole negligence on the part of the truck driver. It may also be mentioned that the truck driver was chargesheeted before the competent criminal court wherein he admitted his guilt and was convicted accordingly. The Tribunal, on appreciation of oral as well as documentary evidence on record, held that the truck driver was solely responsible in causing the accident.

5. On the quantum of compensation, the Tribunal had assessed the monthly loss suffered by the claimants due to untimely death of the deceased at Rs.3000/- per month keeping in mind the prospective income the deceased. The Tribunal had deducted Rs.500/- for personal expenses of the deceased, and had applied a multiplier of 15 looking to the age of the deceased of 40 years at the time of the accident. The Tribunal, on the basis of abovereferred to conclusion, had awarded a sum of Rs.3,70,250.00 with 12% interest to the respondents-claimants, which has given

rise to filing of this appeal by the appellants.

6. Learned counsel Mr. R.H. Mehta, has taken us through the entire record and proceedings of the appeal, and has contended that the Tribunal has awarded higher compensation in favour of the claimants and, therefore, the appeal deserves to be allowed. In our opinion, looking to the evidence produced by the claimants with regard to the income of the deceased, which was supported by the evidence of the Accounts Officer of the ONGC, the Tribunal had awarded a just and adequate compensation to the claimants for the untimely death of the deceased, Tamsin. The Tribunal ought to have deducted 1/3rd amount towards maintenance of the deceased himself and after deduction of 1/3rd, the total amount would come to Rs.2,000/- per month and the yearly loss would come to Rs.24,000/-. However, we are of the opinion that the Tribunal had adopted a multiplier of 12, which was quite on the lower side looking to the age of deceased which was 40 years. In our opinion, the proper multiplier would have been 15 looking to the age of the deceased. Taking into consideration over all view of the matter, in our opinion, the Tribunal has awarded a just and adequate compensation, which cannot be called on a higher side. The awards of compensation on other heads, including the interest, are also quite just and proper, and do not call for any interference.

7. As a result of foregoing discussion, we confirm the judgment and award dated May 4, 1988, passed by the Motor Accident Claims Tribunal (Main) Vadodara, in MAC Application No.742 of 1985. The appeal is dismissed with no order as to costs.

(K.A. Puj, J.)

(swamy)